GP 5601

(3)

Division Bench

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

FIRST APPEAL NO. 154 /2005

APPELLANTS
PLAINTIFFS

1. Smt Kadeera Bee, aged about 88 years, widow of Late Karimuddin, r/o. Khaparganj Tah and Distt. Bilaspur (C.G.)

2. Shahnaz Begum aged about 35 years, daughter of Jahruddin, resident of Khaparganj, Tah. And Distt. Bilaspur (CG)

VERSUS

RESPONDENTS

1. Chaturbhuj Murarka, aged about 56 years, son of Late Mahaveer Prasad Murarka, resident of Khaparganj, Tah. And Distt. Bilaspur (CG)

2.a Seikh Basheer, aged about 32 years, son of Wahiduddin, resident ofKhaparganj, Bilaspur, Chhattisgarh.

2b Lallu, aged about 35 years, son of Wahiduddin, resident of Khaparganj, Bilaspur (CG)

3. Kamalnisha, aged about 65 years, widow of Late Abbas Beg, resident of Khaparganj, Bilaspur, Tah. And Distt. Bilaspur (CG)

4. Jahruddin aged about 59 years, son of Late Karimuddin, resident of Masanganj, Bilaspur, Tah. And distt. Bilaspur (Chhattisgarh)

P.R. No. 174 dt. 5.12.09
Presented by Shri C.P. Sharma
dated 08/12/09

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5. Sofia bee, aged about 65 years, daughter of Late Karimuddin, resident of Masanjganj, Bilaspur, Tah and Distt. Bilaspur (Chhattisgarh)

6. Mohd. Imran, aged about 22 years, son of Late Mohd. Ayyub, resident of Talapara, Bilaspur, Tah. And Distt. Bilaspur (C.G.)

7. Mohd. Iqbal, aged about 45 years, son of Late Mohd Yusuf, resident of Talapara, Tah. And Distt. Bilaspur (CG)

8. Mohd Zameel, aged about 42 years, son of Mohd Yusuf, resident of Talapara, Bilaspur, Tah and Distt. Bilaspur (CG)

9. Nagar Palik Nigam, Bilaspur, through - Its Commissioner, Nagar Palik Nigam, Bilaspur (Chhattisgarh)

10. State of Chhattisgarh, through the Distt. Collector, Bilaspur (CG)

FIRST APPEAL UNDER SECTION 96 OF THE CODE OF CIVIL PROCEDURE, 1908

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. DHIRENDRA MISHRA, JJ.

6-2-2006

Shri M.D. Sharma with Shri C.D. Sharma, counsel for the appellants.

Shri V.D. Bajpayee, Sr. Advocate with Shri A.P. Dubey and Shri Ram Kumar Tiwari, Advocates for respondent No.1.

Shri J.A. Lohani, counsel for the respondents No.2 (a) and 2 (b).

Smt. Hamida Siddique, counsel for respondent No.9.

Shri Sachin Singh Rajput, Deputy Govt. Advocate for the State/ respondent No.10.

None appears on behalf of other respondents.

Regarding respondent No.3, Dasti service was permitted and an affidavit has been filed by Shekh Moinuddin, grand son of the plaintiff, stating that he went to the house of respondent No.3 to serve the notice on 31st January 2006 and she was not present at the residence and her family members refused to take the notice, therefore, service is stated to be sufficient.

Heard learned counsel for the parties for final disposal of this appeal.

The appellants have preferred this appeal being aggrieved by the order dated 4-5-2005 passed by learned 1st Additional District Judge, Bilaspur in unregistered civil suit filed by the appellants for declaration and injunction whereby learned Additional District Judge has rejected the plaint under clause (d) of Rule 11 of Order 7 of the C.P.C. considering the suit as time barred.

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Brief facts leading to filing of this appeal are that the appellants herein filed a civil suit against the respondents herein in the Court of District Judge, Bilaspur from where the suit was transferred to learned 1st Additional District Judge, Bilaspur with the averments that plot bearing sheet No.32 and plot No.116, ad measuring 3975 sq. ft. on which shops and houses are constructed belong to the plaintiff No.1 and she is the owner of the plot. The plaintiff No.2 is in joint possession of the plaintiff No.1 that is why she has been added as plaintiff. The plaintiff No.1 is an illiterate lady and her son used to collect rent from the tenants. However, her son Jaharuddin stopped collecting the rent from defendant No.1 in collusion with the defendant No.1 and that is why he has been made party in the suit. The plaintiff No.1 came to know that defendant No.1 has got recorded his name in the revenue record and defendant No.3 has also got recorded his name in the revenue record. The plaintiff No.1 also came to know that even in the municipal record defendant No.1 got his name recorded. Earlier, the plaintiff had filed a suit for declaration and injunction against respondent/defendant No.1, Jaharuddin, Kamarunnisha in the Court of 3rd Civil Judge Class-1 and same was registered as civil suit No.63-A/2000. During the pendency of that suit, respondent No.1 filed a written statement to the effect that in his favour judgment and decree dated 6-9-86 in civil suit No.8-A/79, and judgment and decree dated 31-3-98 in civil suit No.1-A/97 have been passed, and he is the owner of the property in question.

After filing the written statement in the month of December, 2002, counsel for the plaintiff inspected the records of those civil suits. On inspection of the records of those civil suits by counsel for the plaintiff, the plaintiff came to know about those judgments and decrees in favour of defendant No.1 and moved an application for amendment of the plaint.

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However, same was rejected. However, the fact is that the plaintiff never received any summon or notice of civil suit Nos.8-A/79 and 1-A/97 filed by defendant No.1, he obtained the aforesaid decree by fraud and misrepresentation, therefore same being null and void are not binding on the plaintiff. The plaintiff never engaged any counsel in those suits and she never appeared in those suits, therefore, those decrees are not binding on the plaintiff.

Defendant No.2 Wahiduddin in conspiracy with defendant No.1 executed a sale deed of 1/4th share in favour of defendant No.1 but Wahiduddin had no share in the property, therefore, he was not entitled to sell the property and execute the sale deed in favour of defendant No.1. The amendment application of the plaintiff was refused, even she filed a writ petition in the High Court but same was dismissed. Thereafter, the plaintiff moved an application on 3-4-2003 for withdrawal of the suit and same was allowed on 24-4-2003, and as such, cause of action for filing the civil suit also arose after 24-4-2003 and 30-4-2003. When the summon of the suit was issued to the defendants, respondent No.1 herein moved an application I.A. No.5 under Order 5 Rule 3 read with Order 10 Rule 1, 2 & 3 read with Section 151 read with Order 1 Rule 10 :2: and read with Order 7 Rule 11 of the C.P.C. Learned Additional District Judge allowed the said application and rejected the plaint of the appellants herein considering the same *prima facie* time barred.

Learned counsel for the appellants argued that the plaintiff being an illiterate lady, she never received any summon or notice of the suits filed by the respondent No.1 herein namely of civil suit No. 8-A/79 decided by judgment and decree dated 6-9-86 and of civil suit No.1-A/97 decided by judgment and decree dated 31-3-98. For the first time when respondent No.1

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herein filed a written statement in the civil suit No.63-A/2000 filed by the plaintiff herein for declaration and injunction against respondent No.1, then respondent No.1 filed his written statement on 23-10-2001 claiming himself to be the owner of the property based on the judgment and decree dated 6-9-86 and 31-3-98. On filing of the written statement by respondent No.1, counsel for the plaintiff inspected those files in the month of December, 2002. On inspection, the plaintiff came to know that respondent No.1 herein obtained the decree by practicing fraud & misrepresentation by producing some counsel on behalf of the plaintiff, therefore, the judgment and decree obtained by fraud & misrepresentation are not binding on the plaintiff, and that is why the plaintiff has to file the present suit for declaration that the judgment and decree have been obtained by committing fraud & misrepresentation, same be declared as null, void and not binding as against the plaintiff. Consequently, the entries made in the revenue record and municipal record be also declared void and ineffective as against the plaintiff and not biding on the plaintiff, and perpetual injunction be issued against the respondent No.1 that he should not demolish the property marked by the plaintiff as अ, ब, स, द.

On the other hand, Shri V.D. Bajpayee, learned Sr. Advocate argued that based on the plaint itself the suit is *ex facie* time barred for the reason that decrees were obtained as back as in the year 1986 and 1998. Even the plaintiff herself moved amendment application in the civil suit No.63-A/2000, when that application was rejected, he filed a writ petition before the High Court and same was dismissed. Therefore, impugned order passed by the trial Court is in consonance with the provisions of Order 7 Rule 11 (d) of the C.P.C.

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In order to appreciate the argument advanced by respective counsel we have perused the plaint, impugned order and clause (d) of Rule 11 of Order 7 of the C.P.C. which reads as under:-

> '11 Rejection of plaint:- The plaint shall be rejected in the following cases:-
>
> (a) x x x
>
> (b) x x x
>
> (c) x x x
>
> (d) Where the suit appears from the statement in the plaint to be barred by any law.'

In view of the above provision, the Court is required to look into the plaint only. If the averment made in the plaint shows that the averment in the plaint makes the plaint barred by any law, then the plaint has to be rejected at the threshold. Learned trial Court in para-8 of the impugned order has mentioned that earlier the civil suit No.63-A/2000 was filed by the plaintiff and as per the pleading of that suit, as per the provisions of Rule 2 of Order 23 of the C.P.C., no new cause of action has arisen; therefore, the limitation will start from the date of filing of the civil suit No.63-A/2000.

Having heard learned counsel for the parties and having perused the impugned order and record, we are of the considered opinion that the impugned order passed by the trial Court is *prima facie* perverse. The Court below has dismissed the suit of the plaintiff by holding that the suit is barred by law of limitation. In paragraph 8 of the impugned order it has been mentioned that the plaintiff has not pleaded as to on what date she learnt about the impugned judgments and there is no pleading regarding new cause

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of action. In the aforesaid circumstances, it would be held that the applicant had the knowledge of judgment and decree dated 6-9-86 & 31-3-98 on the respective dates. The above reasoning of the Court below is contrary to the pleadings of the plaintiff. Thus, the plaintiff in paragraph 12 of the plaint has pleaded that he learned about the judgment and decree only after inspection of record of those cases in December, 2002, as the aforesaid objection was taken by defendant No.1 in the written statement filed in Civil Suit No.63-A/2000 in the Court of 3rd Civil Judge, Class-I and the cause of action again arose to the plaintiff within the pecuniary territorial jurisdiction of the trial Court after 24-4-2003 and on 30-4-2003 when defendant No.1 applied for permission before the Corporation for construction over the disputed plot after demolishing the marked portion of construction. Thus, from over all reading of the plaint, it cannot be said that the plaintiff did not have cause of action afresh for filing the subsequent suit. It is settled law that while considering the provisions of Clause (d) of Rule 11 of Order 7 of the C.P.C. the Court is required to look into the facts mentioned in the plaint only and in the plaint, in para-12, it has been mentioned that the judgment and decree dated 6-9-86 passed in civil suit No.8-A/79 and judgment and decree dated 31-3-98 passed in civil suit No.1-A/97 were obtained by committing fraud, summons were never served on the plaintiff and, therefore, those decrees are not binding on the plaintiff. The plaintiff came to know about those decrees when counsel for the plaintiff inspected those files in the month of December, 2002 after filing the written statement on 23-10-2001 on behalf of respondent No.1 in the earlier suit. In para-21 of the plaint, it has been mentioned that cause of action arose on 24-4-2003 and 30-4-2003 when the plaintiff withdrew the earlier suit and thereafter filed this suit. For the purpose of limitation whether the instant suit filed by the plaintiff is within time or not the date of filing of the earlier suit No.63-A/2000 cannot be taken into

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consideration for the reason that the said suit was filed simply for declaration and injunction against the respondent No.1 herein. The present suit has been filed with the averments that plaintiff No.1 had no knowledge about the judgment and decree dated 6-9-86 and 31-3-98 obtained by respondent No.1 herein in civil suits No.8-A/79 and 1-A/97. She came to know about these decrees only on inspection of those files by counsel for the plaintiff after filing the written statement by respondent No.1 herein in earlier suit on 23rd October 2001 because in the earlier suit the judgments and decrees dated 6-9-86 and 31-3-98 were not in issue, and for declaring the judgments and decrees dated 6-9-86 and 31-3-98 as null and void and inoperative as against the plaintiff, the plaintiff No.1 from the date when same came into knowledge of plaintiff No.1 and, therefore, question whether the judgments and decrees came into knowledge of the plaintiff No.1 either in the year 2001 or 2002 on inspection or these decrees were passed after effecting service of summon on the plaintiff and that can be decided only by allowing the parties to adduce their evidence on the above aspect. If the plaintiff is able to prove by the evidence that she came to know about those judgments and decrees either in the year 2001 or 2002, then her suit will definitely be within limitation. However, if the plaintiff fails to establish by evidence the averments made in the plaint, then her suit will definitely fail on the ground of limitation.

In the result, the appeal succeeds and same is allowed. The impugned order is set aside. The trial Court is directed to proceed further with the trial of the suit. It is made clear that respondents are entitled to raise objection about the limitation in their written statement and same will be tried and decided by the trial Court after giving opportunity to the parties to adduce their evidence on the respective claims.

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	In facts and circumstances of the case, there shall be no orders as to cost. M.(C.)P. Nos.1077/2005, 1079/2005 and 1420/2005 stand disposed of accordingly. Parties are entitled for certified copy of this order. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

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